



State of Tennessee Department of Children's Services

## **Administrative Policies and Procedures: 2.1**

**Subject: Service of Legal Process, Subpoenas and Legal Representation For Department of Children's Services Employees**

**Supersedes: DCS 2.1, 08/01/01**

**Local Policy: No**

**Local Procedures: No**

**Training Required: No**

**Applicable Practice Model Standard(s): Yes**

**Approved by:**

**Effective date: 08/01/01**

**Revision date: 06/01/05**

### **Application**

To All Department of Children's Services Employees

**Authority:** TCA 8-6-30, 8-42-101-104, 9-8-112, 9-8-307, 37-1-121-123, 37-5-106

### **Policy**

This policy provides employees who are sued as a result of actions that occur within the scope of their employment with the Department of Children's Services with a procedure by which they can secure legal representation at state expense. This policy also outlines procedures for service of process, including the initiation of a lawsuit and the service of subpoenas. The Department of Children's Services lawyer assigned to the county in which the employee works will be the contact person to evaluate the legal documents and provide any necessary assistance to the employee.

### **Procedures**

#### **A. Overview**

##### **1. Civil action**

- a) When a civil action is commenced against a state employee for allegations of acts or omissions of the state employee within the scope of employment and the employee is sued in his/her official capacity only, the Attorney General must be served in order for service to be effective.

- b) The summons and complaint must not be accepted on the local level and the person attempting service must be told that service is effective only through the Attorney General.
- c) The Attorney General has the discretion to provide representation to the employee or to decline representation and refer the employee to outside counsel, whose fees will be paid by the State, as long as the acts complained of, were within the employee's scope of employment.
- d) If the employee is being sued in his/her personal or individual capacity, the Attorney General has discretion to decline representation if there appears to be a conflict of interest with the State's position or some other impediment to representation.
- e) An employee sued in his or her individual capacity may be entitled to outside counsel paid for by the State, but the Board of Claims will be make that determination.
- f) The Attorney General's office may choose not to represent an employee if the employee is alleged to have acted with willful, malicious, or criminal intent or if omissions or acts were done for personal gain.
- g) The State will not pay attorney fees if the employee is found to have acted in a willful, malicious manner or with criminal intent or for personal gain.

## **2. Criminal action**

- a) When criminal action is **initiated** by warrant, information, or indictment against any state employee in the scope of the employee's assigned official duty, the Attorney General and reporter will not represent the employee or provide representation.
- b) If the criminal charges against the employee are dismissed with prejudice or in the event that the employee is acquitted at trial or upon appeal, all reasonable compensation for the employee's counsel, court costs or necessary incidental expenses, as determined by the attorney general and reporter shall be payable from funds appropriated to the attorney general and reporter.
- c) In the event that the charges against the employee are

retired or dismissed, or the case is not prosecuted for any other reason, the attorney general and reporter may compensate such counsel for all reasonable fees and necessary incidental expenses and pay court costs in connection with the action, where the attorney general and reporter finds that the employee did act in the scope of the employee's assigned duties under apparent lawful orders or authority.

- d) In no event shall any funds be expended for compensation for counsel, court costs or necessary incidental expenses, where the employee is convicted of any criminal offense.

**B. Service and  
notification of  
legal process on  
DCS Employees**

1. Employees shall be notified of lawsuits that have been filed against them, or of their being summoned to appear as a witness, by being served a copy of a suit or summons sent through the U.S. Mail (certified) or personally presented to them by a process server (sheriff, warrant officer, etc).
2. Employees shall not accept service if they are being sued in their official capacity. Only the Attorney General can accept service.
3. Employees assigned to a region will consult with the DCS local lawyer before signing or accepting service so that the issues of official/individual capacity and nature of lawsuit can be reviewed. Central office and YDC employees will contact the Office of the General Counsel for advice prior to accepting service.
4. If the DCS lawyer advises the employee that he/she can accept service, the employee must sign that they received the legal process documents on form *CS-0663, Receipt For Legal Service of Process on Employee*.
5. Service of process (*summons or complaint*) shall not be accepted by anyone other than the person named, which will occur only if the person is sued in his/her individual capacity and after being so advised by DCS legal staff.
6. A subpoena for the records of the department pertaining to the employee may be served on the employee, but the employee must immediately take the subpoena to legal staff for assistance and representation. If no DCS legal staff is immediately available, notify the office of the General Counsel.

**7. Service of process (*summons or complaint*) shall not be**

**accepted on behalf of:**

- (a) An entity (i.e., the State of Tennessee; Department of Children's Services; Mountain View Youth Development Center, or the Commissioner, etc.)
  - (b) Unknown or unnamed defendants to a law suit even if the identity of the unknown or unnamed defendant is known or readily ascertainable.
- 5. Time is critical and a summons, complaint, or subpoena must be taken to the local DCS lawyer immediately for the lawyer to forward the documents simultaneously, to the Office of the Attorney General and Office of General Counsel.
  - 6. When in doubt, **do not** sign or accept anything until it has been checked with local DCS counsel.

**C. Service and  
notification of  
legal process on  
youth in DCS  
custody,**

Employees shall **not** accept or receive a summons or subpoena for a child/youth. If an effort has been made to try and serve a child/youth, the local legal counsel or the office of general counsel must be contacted.

**D. Legal  
representation for  
employees**

- 1. If an employee is personally served with a summons and complaint, he/she must contact the DCS attorney assigned to that county or region who will assist him/her in requesting representation from the Attorney General. Time is critical and requests for representation must be made **immediately** after service.
- 2. All requests to the Attorney General for representation must be made within ten (10) days of service of the summons and complaint on the employee in order for any payment to be made with regard to a final judgment against the employee by the Board of Claims.
- 3. When an employee is subpoenaed to testify as a witness either in a civil or criminal action, the employee must contact their DCS local attorney immediately. The employee cannot provide documents or information without approval of the local attorney.

**Forms**

CS-0663      Receipt for Legal Service of Process on Employee

## **Collateral Documents**

*None*

## **ACA Standards**

3-JCRF-1A-19

3-JTS-1A-28

DCS Practice Model Standard – 8-306

## **Glossary**

<b><i>Term</i></b>	<b><i>Definition</i></b>
<b><i>Affidavit:</i></b>	A written declaration or statement of facts made voluntarily and confirmed by the oath or affirmation of the party making it.
<b><i>Complaint:</i></b>	The initial legal document or pleading in which the allegations of the plaintiff(s) have been articulated in a manner that gives the persons(s) sued notice of the lawsuit and the detailed allegations made against the person. A complaint has to be answered within a certain time frame or a default judgment can be taken against the defendant.
<b><i>Scope of employment:</i></b>	An employee acts within the scope of employment whenever the employee is doing something in furtherance of his official duties in good faith, with apparent lawful authority and in accordance with departmental policies and procedures.
<b><i>State employee:</i></b>	Includes any person who is employed in the service of and whose compensation is payable by the state or any participant in a volunteer program authorized by the Department.
<b><i>Subpoena:</i></b>	A command to appear at a certain time and place to give testimony upon a certain matter.
<b><i>Summons:</i></b>	A document that cites a defendant ( <b>the employee and/or the department</b> ) to appear in court to answer a suit that has been initiated against the parties named on the summons.